No. 13800

In the United States Court of Appeals

For the Ninth Circuit

ROBERT DONALD ROWLAND,
Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee.

Appellant's Opening Brief

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TABLE OF CASES AND AUTHORITIES CITED

Cases

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JURISDICTIONAL STATEMENT

This is an appeal from a judgment of conviction of the appellant by the District Court of the Southern District of California.

This court has jurisdiction under the provisions of 28 United States Code, Sections 1291 and 1294 (1).

STATEMENT OF THE CASE

Appellant was indicted on October 15, 1952 under U.S.C., Title 50, App. Sec. 462—Selective Service Act, 1948, for refusing to submit to induction [R. 3].[1]

[1]All references to the Transcript of Records are designated by pages of it, as follows: [R. 3]. A photocopy of the entire Selective Service File of appellant was entered in evidence as Government's Exhibit 2. The file is not part of the Transcript of Record but is before the court. All references to the file are designated as pages of Exhibit 2, as follows: [Ex. p. 3]; the pagination of Exhibit 2 is by a one-quarter inch high pencilled number, circled, and ordinarily is found at the bottom of each sheet of the Exhibit.

Appellant was convicted by Judge William C. Mathes on February 9, 1953; he was sentenced by said judge to a 4-year term of imprisonment on March 2, 1953. [R. 11-12.]

In the court below as well as before the Selective Service agencies, appellant claimed to be a conscientious objector to all participation in military activities and that he was entitled to a classification as such, to-wit: 1-O.

At his first opportunity, on November 6, 1950, he disclosed that he was a conscientious objector by signing Series XIV in the Classification Questionnaire. [Ex. p. 10.]

In his Special Form for Conscientious Objectors [Ex. pp. 12-15] he set forth the details requested concerning his religious training and his religious belief, including the following:

1. First, he chose to sign Series I—(B), thus indicating he was opposed to all participation in military service. [Ex. p. 12.]
2. He described his belief, answering series II—2 as follows:

> "I believe that it is wrong to kill, (Romans 13:9) that it is wrong to fight with carnal weapons (2 Corinthians 10:3-5; Ephesians 6:12; Matthew 26:52) and participate in carnal warfare (John 18-36). Since these are the duties of Military Services I can't join them, I also believe it is my duty to

meet with the Church of Christ on the first day of the week. I believe that I should obey the Lord rather than man." [Ex. p. 12.]

3. That the source of his training was:

"By studying the Bible for myself. From religious teaching in the Church of Christ, and from my Mother's training at home, both from my earliest remembrance." [Ex. p. 13.]

4. That his mother is a member of the Church of Christ and that he was baptised in it May 8, 1948. [Ex. p. 14.]*
5. He answered the question "5. Under what circumstances, if any, do you believe in the use of force?" "None—Luke 3:14." [Ex. p. 13.]
6. All his other answers, on pages 12 to 15 of Exhibit 2 were consistent and corroborative.

When the local board classified him in Class 1-A-O (Conscientious Objector Available for Noncombatant Military Service only) he promptly [R. 65, 66] went to the office of the local board to have a personal appearance and to appeal [R. 61, 62]. He considered his conversation there with the clerk his "personal appearance" [R. 61]; the clerk convinced him that he couldn't get the classification changed and, even more impor-

*This section of the Church of Christ is one of the historic pacifist groups. It has over 200 congregations and has a history, in America, of over 100 years as a pacifist organization: Attorney General File No. A. G. 000.31 and Congressional Record, May 7, 1942. [See Appendix C.]

tant, that there was nothing he could do [R. 62]; he also considered that his conversation with the clerk was the "appeal" mentioned in the Selective Service documents. [R. 68].

During the trial appellant complained that the Order to Report for Induction was invalid because the classification was without a basis of fact [R. 34-36] and that no valid basis or any basis existed for crediting the sincerity and genuineness of appellant's professions of religious conscientious objections on the one hand, by giving him a 1-A-O classification, and denying these professions on the other hand by refusing him the 1-O classification [R. 36-38]; second, that a failure in the proof existed, namely whether the classification had been made by a majority of the board and with a quorum present [R. 38-43]; and third, that he had been denied due process by being frustrated in his attempt to secure both a genuine personal appearance and the procedural appeal.

Appellant also had attacked the indictment as being insufficient. [R. 9.]

QUESTIONS PRESENTED

1. The board gave appellant a limited conscientious objector status. This 1-A-O classification made him liable for training and service in the armed forces for noncombatant military service.
   Was the 1-A-O classification arbitrary, capricious and without basis in fact?

2. The undisputed evidence showed that a variance existed between the numerical evidence of the voting on appellant's classification by the board and the written evidence.
   Was the trial court required to find, as a matter of law, that the written evidence governed, in determining whether or not the classification of appellant was made by less than a majority of the members present at the meeting and that the meeting itself was illegal for want of a quorum?

3. Was the indictment fatally defective?

4. Was the defendant frustrated in his attempt to secure a personal appearance and an appeal?

SPECIFICATION OF ERRORS

1. The District Court erred in not concluding that the 1-A-O classification and the denial of the full conscientious objector status were arbitrary, capricious and without basis in fact. [R. 58.]
2. The District Court erred in not holding that the motions [R. 58, 77] for judgment of acquittal should have been granted.
3. The District Court erred in not holding that the indictment was fatally defective. [R. 9, 83.]

ARGUMENT

I.

THE DENIAL OF THE TOTAL CONSCIENTIOUS OBJECTOR STATUS AND THE DECISION TO CLASSIFY IN CLASS 1-A-O (MAKING APPELLANT LIABLE FOR NONCOMBATANT MILITARY SERVICE) WERE ARBITRARY, CAPRICIOUS AND WITHOUT BASIS IN FACT.

Section 6 (j) of Title 1 of the Selective Service Act of 1948 (50 U.S.C. §456 (j)), provides, in part, as follows:

> "Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not in-

clude essentially political, sociological, or philosophical views or a personal code."

Section 1622.20 (a) of the Selective Service Regulations [32 C.F.R. 1622.20 (a)] provided[1]:

> "In Class 4-E shall be placed any registrant who, by reason of religious training and belief, is found to be conscientiously opposed to participation in war in any form and to be conscientiously opposed to participation in both combatant and noncombatant training and service in the armed forces."

Section 1622.6 of the Selective Service Regulations [32 C.F.R. 1622.6] provided[2]:

> "(a) In Class 1-A-O shall be placed every registrant who would have been classified in Class 1-A but for the fact that he has been found, by reason of religious training and belief, to be conscientiously opposed to combatant training and service in the armed forces."

The evidence submitted by the appellant establishes that he had sincere and deep-seated conscientious objections against combatant and noncombatant military service which were based on his "relation to a Supreme Being involving duties superior to those arising from any human relation." This material also showed that his belief was not based on "political, sociological, or

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[1]On 28 September 1951 the nomenclature changed; Class 4-E became Class 1-O.

[2]On 28 September 1951 the section number was changed to 1622.11; it is otherwise the same.

philosophical views or a merely personal code," but that it was based upon his religious training and belief as an observant member of the pacifist division of the Church of Christ.

There is not one iota of evidence that in any way disputes the appellant's proof submitted showing that he was a conscientious objector with scruples against all participation in military activity.

There is no question whatever on the veracity of the appellant. The question is not one of fact but is one of law. The law and the facts irrefutably establish that appellant is a conscientious objector opposed to combatant and noncombatant service.

In view of the fact that there is no contradictory evidence in the file disputing appellant's statements as to his conscientious objections and there is no question of veracity presented, the problem to be determined here by this Court is one of law rather than one of fact. The question to be determined is: Was the holding by the board (that the undisputed evidence did not prove appellant was a conscientious objector opposed to both combatant and noncombatant service) arbitrary, capricious and without basis in fact?

A decision directly in point supporting the proposition made in this case, that the 1-A-O classification (conscientious objector willing to perform noncombatant military service) is arbitrary and capricious is *United States v. Relyea,* No. 20543, United States Dis-

trict Court for the Northern District of Ohio, Eastern Division, decided May 18, 1952. In that case the district court sustained the motion for judgment of acquittal saying, among other things, as follows:

> "I think it would have been more difficult for the court to find the act of the Board was without any basis in fact if the Board had classified this man as 1-A rather than 1-A-O. They accepted the defendant's profession of sincere and conscientious objections on the religious grounds as being truthful, but they attempted, and in my opinion without any basis in fact, to assert that while he was sincere and conscientious, that sincerity and conscientiousness extended only to his active aggressive participation in military service and that he was not sincere in his statements that he was opposed to war in all its forms."

A similar holding was made by United States District Judge Murray in *United States v. Goddard,* No. 3616, District of Montana, Butte Division, June 26, 1952. The court, among other things, said:

> " . . . after due consideration, the Court finds that the evidence is insufficient to sustain a conviction for the reason that there is no basis in fact disclosed by the Selective Service file of defendant upon which Local Board No. 1 of Ravalli County, Montana, could have classified said defendant in Class 1-A-O, and therefore the said Board was without jurisdiction to make such classification of defendant and to order defendant to report for induction under such classification."

This case is distinguished from the facts in *Head v. United States,* 199 F. 2d 337 (10th Cir.), where the 1-A-O classification was held to be proper. In that case the Court of Appeals found a basis in fact in the selective service file on which it could be said Head's scruples extended only to killing. The basis was this: Head's answer to a question in the Special Form for Conscientious Objectors (SSS Form No. 150) showed that he relied on a certain minister for guidance in religious matters; the F.B.I. investigation revealed (as shown by the Hearing Officer's report) that the minister held the noncombatant service view. The Tenth Circuit apparently concluded Head was bound to hold the same views as his teacher. Also, facts were present in the *Head* case which tended to impeach the good faith conscientious objections of the registrant. Here the undisputed evidence showed that the appellant held the view that he could not take *any* part in military activity and there is no evidence whatsoever that any of his teachers or associates held the noncombatant view.

There is absolutely no evidence whatever in the draft board file that appellant was willing to do noncombatant military service. All of his papers and every document supplied by him staunchly presented the contention that he was conscientiously opposed to participation in both combatant and noncombatant military service. The board, without any justification whatever, held that he was a conscientious objector who was willing to perform noncombatant military service.

Never, at any time, did the appellant suggest or even imply that he was willing to do noncombatant military service. He, at all times, contended that he was unwilling to go into the armed forces and do anything as a part of the military machinery.

The board, without any grounds whatever, compromised appellant's claim for total conscientious objection and awarded him only partial conscientious objector status.

It was arbitrary for the board to grant only part of appellant's claim and his testimony and reject the balance. The board classified appellant as one who was willing to serve in the armed forces and perform noncombatant service. This finding flies directly in the teeth of the evidence. If the board gave appellant a 1-A classification it could be argued that the board had refused to believe him sincere. Obviously the board believed him sincere or it could not properly have given him the 1-A-O classification.

Congress did not tend to confer upon the draft boards arbitrary and capricious powers in the exercise of their discretion. They must follow the law when the facts are undisputed. If there is a dispute the boards have the jurisdiction to weigh the testimony. In the case of a denial of the conscientious objector status, if there is no dispute in the evidence and the documentary evidence otherwise establishes that the registrant is a conscientious objector, it is the duty of the court to hold that there is no basis in fact. It must conclude

that there is an abuse of discretion, and that the classification is arbitrary and capricious. It is submitted that such is the case here. The undisputed evidence shows that the appellant is a conscientious objector entitled to the 1-O classification. The denial of the classification is without basis in fact. The classification of 1-A-O flies in the teeth of the evidence. Such classification is a dishonest one, making it unlawful. *Johnson v. United States* (8th Cir.), 126 F. 2d 242, 247.

There is no basis in fact for the classification in this case because there are no facts that contradict the documentary proof submitted by the appellant. The facts established in his case show that he is a conscientious objector to noncombatant service and, therefore, the classification given is beyond the jurisdiction of the boards.

It is respectfully submitted that the motion for judgment of acquittal should have been sustained because there is no basis in fact for the classification given by the draft boards and the denial of the total conscientious objector classification was arbitrary and capricious.

Counsel believes the decision of this court can and should be a definitive statement on the problem involved; that the Selective Service System and the District Courts will welcome such a definitive statement.

The attention of the court is invited to Appendices A and B wherein are found further comments on this

problem by two informed and thoughtful conscientious objectors.

II.

THE INDICTMENT IS FATALLY DEFECTIVE

The indictment [R. 3] is fatally defective because inextricably contained in it are incorrect references to the former Act.

The Selective Service Act of 1948 was amended on June 19, 1951, by being completely replaced by the Universal Military Training and Service Act.

Appellant's refusal to submit to induction, the basis for this prosecution and conviction, occurred on July 28, 1952.

The caption of the indictment spells out the obsolete Act; the body of the indictment is reproduced below, certain portions being underlined to emphasize the essentiality of the offensive references to the obsolete Act:

> "The grand jury charges:
>
> "Defendant ROBERT DONALD ROWLAND, a male person within the class made subject to selective service *under the Selective Service Act of 1948,* registered as required *by said act and the regulations promulgated thereunder* and thereafter became a registrant of Local Board No. 113, said board being then and there duly created and acting, under the Selective Service System *estab-*

> *lished by said act,* in Los Angeles County, California, in the Central Division of the Southern District of California; *pursuant to said act and the regulations promulgated thereunder,* the defendant was classified in Class 1-A-O and was notified of said classification and a notice and order by said board was duly given to him to report for induction into the armed forces of the United States of America on July 28, 1952, in Los Angeles County, California, in the division and district aforesaid; and at said time and place the defendant did knowingly fail and neglect to perform a duty required of him *under said act and the regulations promulgated thereunder* in that he then and there knowingly failed and refused to be inducted into the armed forces of the United States as so notified and ordered to do."

Since the indictment is a pleading its sufficiency must be determined by the facts therein set forth.

Taylor v. United States, 2 F. 2d 444, 446.

Where reference to a statute in an indictment is essential for the reason that the indictment would otherwise be lacking in necessary allegations an incorrect reference to the statute may be fatal.

> "The ancient rules as to the effect of even a slight error in the recital of a statute in an indictment have been much relaxed. Where the reference to the statute must be considered because the indictment is senseless, or lacking in essential alle-

gations unless the reference is considered, a misrecital may be fatal; but, if an offense is otherwise fully stated in an indictment, a mistaken reference to a statute is surplusage and does not render the indictment invalid."

Johnson v. Biddle, 12 F. 2d 366.

"The offense laid in an indictment is charged by the allegations of fact not by reference to statutes. If reference to a statute is essential for the reason that the indictment does not make sense or is lacking in necessary allegations without it, an incorrect reference may be fatal."

Martin v. United States, 99 F. 2d 236.

Public Law 51, 82nd Congress (Universal Military Training and Service Act) approved June 19, 1951, Title I, Section 1, amended section 1 (a) of the Selective Service Act of 1948 (62 Stat. 604) as amended so as to provide that said act was to be cited as the "Universal Military Training and Service Act."

The indictment in the case at bar and each allegation of fact in such indictment is based and is dependent on the "Selective Service Act of 1948" when, in fact, there was no such act, as such in full force and effect at the time of the alleged offense.

A common law crime is not involved in the case at bar. It is submitted that to allege the crime the indictment appears to attempt to allege, reference to the ap-

plicable statute is essential for the reason the indictment would otherwise be lacking the necessary allegations of fact. While reference to a statute is made in allegations of fact in the indictment in the case at bar the reference made is erroneous. For that reason the indictment does not allege any crime whatsoever.

It is true that where an offense is sufficiently charged an incorrect reference to a statute does not render the indictment invalid. That rule is inapplicable where a reference to a statute and the regulations promulgated thereunder are necessary in order to sufficiently charge the crime upon which the indictment is based.

For the reasons expressed above the indictment of Robert Donald Rowland in this case should have been dismissed.

III.

THE CLASSIFICATION OF APPELLANT WAS MADE AT AN ILLEGAL MEETING OF THE BOARD.

The factual basis for this point and the argument, with its supporting references, are fully set forth in the Transcript of Record, pp. 38-43.

The citation for the case of *Ohl vs. Smith* referred to therein, is 288 U. S. 170, 177.

IV.

THE DEFENDANT WAS FRUSTRATED IN HIS ATTEMPT TO APPEAL AND WAS THEREBY DENIED DUE PROCESS.

Every dissatisfied Selective Service registrant is offered an opportunity to have the State Appeal Board pass on the merits of his claims for a deferred or exempt classification [§1626.2].

Every Selective Service registrant, professing to be a conscientious objector, but denied a 1-O classification by the local board is offered an opportunity to have the merits of his claims evaluated and determined by the State Appeal Board after certain "special provisions" relating to such registrants are followed. These special provisions include an intensive investigation by the Federal Bureau of Investigation, an un-

hurried hearing by a Hearing Officer of the Department of Justice, a lengthy analysis by him to the Attorney General and an analysis and recommendation by the Attorney General to the State Appeal Board.

Every dissatisfied Selective Service registrant is also offered an opportunity to make a personal complaint to the local board. At all other times he may contact only the clerk. The clerk is the only salaried employee. Her patience is tested every day. She has a great load of paper work and must also be the buffer between the registrant, his mother and the board. Sometimes she protects the board too well; the concise and to the point evidence in this case reveals that this occurred [R. 62].

Appellant had no genuine appeal; nor did he have a true personal appearance. Promptly after receiving the Classification Notice he attempted to appeal. He did this by going to the government official who mailed him the notice and discussed with her his dissatisfaction with the classification. When she told him the board wouldn't change the classification he asked her if there was anything he could do and she told him there wasn't [R. 62]. There was no rebuttal to this evidence.

All the clerk had to do was to say to him "Write on this piece of paper the words 'I appeal' and then sign your name." In any event she was under a duty not to mislead him by telling him that nothing could be

done. In *Rock Island, A. and L. R.R. v. United States,* 254 U. S. 141, at 143 Mr. Justice Holmes declared "Men must turn square corners when they deal with the Government." Appellant believes it follows that a 19 year old citizen can expect the same standard of right-angled rectitude from his government's officials.

Appellant submits that the record demonstrates that this local board official frustrated him in perfecting his appeal and that it demonstrates that he never intended to waive his right to an appeal. Counsel asserts to the court that he has learned that two clerks in the Los Angeles area have been discharged for so frustrating registrants and that all clerks of this area have been instructed to place a sheet of paper in front of each registrant who presents himself at the local board office, within the 10-day appeal period, complaining of his classification, and to tell him to write on the paper the two words "I appeal" and then sign his name.

Selective Service registrants at the present time are all young and inexperienced; they should not be held to the same appeal formalities, the same degree of skepticism towards statements by minor governmental functionaries and the same judgment that is expected of lawyers or even of lay adults.

> *Cox v. Wedemeyer,* 192 F. 2d 920, 922-923 (9 C. A.).

In his last reported decision before becoming Attorney-General Judge McGranery held, in *Ex Parte Fabiani,* 105 F. Supp. 139:

> "The different objective to be achieved by the new Act behooves us to employ a more liberal standard of judicial review, so as better to protect the rights of the individual. Should—which God forbid—world tension increase greatly or should general war come, then the judicial arm can once again cut to the barest minimum its supervision of the operations of the draft." [146-147.]

A number of courts have concluded that Selective Service registrants were frustrated, under very similar circumstances:

United States ex rel. Filomio v. Powell, 38 F. Supp. 183

> Regulations then in force provided the registrant was to appeal on a form to be attached to his classification questionnaire.
>
> On p. 187 the Court observed: "Evidence is conflicting as to whether Filomio demanded the questionnaire in order that he might perfect his appeal. We do not feel that it was readily available, and hence his omission in this respect was beyond his control." [187]

United States ex rel. Beye v. Downer, 143 F. 2d 125

> Registrant was deprived of a right to appeal by the local board deliberately frustrating him.

Facts: Board persuaded Army to waive medical certificate of acceptability [after registrant had been found to be eligible for a 4-F classification] by writing Army "This man has been a complete nuisance."

C.C.A. 2 reversed a decision that had denied petitioner a writ.

Ex Parte Hutflis, 245 F. 798 (W.D.N.Y. 1917)

This W.W.I. petitioner asserted

1. Through ignorance his claim to exemption [alien] was not filed:
2. That he was misled by a member of the board, though unintentionally, as to the method of filing his claim for exemption.

(He applied to the local board for a form upon which to file his claim for exemption, and was given by mistake an appeal blank)

Q. Did relator waive his privilege of asserting an exemption?

On page 800 the Court held: "It seems to me, under the circumstances, that waiver is of doubtful application for at no time did the relator intend to relinquish any rights . . . relator has had no hearing whatsoever, his evidence is not in, and his right to exemption has not been passed upon."

SUMMARY

The appellant's selective service file reveals that there was no basis in fact for classifying appellant in a 1-A-O classification and that there was no factual basis for making a distinction between his claims and his deserts.

The trial evidence does not contain sufficient proof that appellant had been classified at a meeting of the board where a quorum was present or that he had been classified by a majority of those present or that all present had voted.

The indictment reveals that it was fatally defective.

The unrebutted trial evidence shows that appellant had been frustrated in his attempt to secure a true appearance before the local board and a true appeal.

Respectfully submitted,

J. B. TIETZ,
Attorney for Appellant.

Appendix

APPENDIX "A"

With reference to the correspondence that you and A. J. have had about suggestions for draft boards which would facilitate deciding which men were entitled to 1-O and which to 1-A-O classifications. I think that the only additional comment that I have to offer is an expression of hope that, whenever a young man asks for a 1-O classification, he not be given the 1-A-O classification unless the evidence clearly indicates that he should be put in 1-A-O. The main reason for saying this is that in this area, particularly in the hearings of a now-deceased hearing officer, there used to be some questions asked that came almost in the category of trick questions. The principal one of these was a question as to whether the registrant would have any objection to doing hospital work on behalf of injured soldiers. If the registrant said yes, then there was almost no chance that he could get a recommendation for a 1-O position. This and similar questions never seemed to be asked in such a context as to bring out anything like the total import of doing non-combatant work. The question suggested that non-combatant work consisted almost exclusively of work in hospitals, which I believe is not true. Where we have had opportunities to advise registrants ahead of time as to what questions might be asked them, we warned them about this particular question and about its total import.

Whatever the situation now in this and other areas, if something can be done to induce Selective Service officials to base 1-A-O classifications in situations where 1-O is sought on more substantial evidence than a simple yes to a question of this sort, that would seem to me to help prevent some of these controversies from arising about the 1-A-O classification and to be of general service to COs.

APPENDIX "B"

In re your query about the suggestion made by Judge Mathes that "some type of instructions for draft boards that would help them determine the difference between the 1-A-O and the 1-O position" should be prepared.

The law requires that the Selective Service Board and the appeal machinery decide if an applicant is conscientiously opposed on grounds of religious training and belief to combatant participation in the armed forces (1-A-O) or opposed to noncombatant as well as combatant service in the armed forces (1-O). This imposes upon the board, etc. the difficult—some would say impossible—task of determining whether the applicant is "sincere" and whether in taking either the 1-O or the 1-A-O position he does so on grounds of religious training and belief. It seems to me to follow that once a board decides that a man is "sincere" and "religious"—and this is clearly implied if it is prepared to put the applicant either in 1-O or 1-A-O, a board would have no more right to put a man in the latter than in the former classification if it has doubts about his being "sincere" or "religious"—than the decisive, and perhaps the only, criterion whether the man should go in 1-O or 1-A-O is the man's own say-so.

If the board decides that an applicant who asks for 1-O is not entitled to that classification, it would appear

that it must do so either because it believes the applicant is mistaken in asking for 1-O instead of 1-A-O or that he is dishonest. (For example, he wants to be kept out of range of gun fire.) If the former is the case, and the man is honestly mistaken as to the classification in which he belongs, he can readily be convinced of this by persuasion. If, as I sense is usually thought to be the case, the board believes that the applicant is dishonestly seeking 1-O when he actually belongs in 1-A-O, it has no right, as I see it, to give him either 1-O or 1-A-O. It has to regard him as a draft evader in the invidious sense of the term.

Presumably, a draft board feels it to be its duty to get all able-bodied men of draft age into the armed forces. But Congress has imposed a limitation of this responsibility of draft officials to man the armed forces, namely that they may not coerce the conscience of one sincerely opposed to all war on the grounds of religious training and belief. The obligation to get every able-bodied man into the armed forces is in such case superceded by the obligation not to coerce conscience. Again, therefore, if an applicant is adjudged "sincere" and "religious" and said applicant states that he is unalterably and conscientiously opposed to noncombatant as well as combatant service in the armed forces, the board would seem to have no more right to force him into 1-A-O than it has a right to force a sincere and religious youth who asks for 1-A-O into armed service (1-A).

A couple of observations on what supposedly makes the individual decide that he belongs in 1-O or 1-A-O, may be relevant.

1. The C.O. is always confronted with the fact that in a highly integrated society and in a period when war tends to be total, the individual cannot extricate himself in an absolute sense from that society or from some implication to war. The food which the farmer raises may be used to feed soldiers and munitions workers. Even the so-called absolutist C.O. who will not even register and who submits to imprisonment rather than violate his conscience, is faced in prison with the question as to whether cooperativeness there indirectly helps the war effort, whether he is putting his integrity in question by accepting food and housing from a war making government, etc. In such situation one sincere person will feel that where there is no such thing as a perfectly logical point at which to draw the line he has to draw it at performing combatant service. Another equally sincere person may be inwardly assured that he has to draw it against any service in the armed forces. One will feel that his responsibility to society and God requires him to "go along" with the government as far as he can; another equally sincere person may feel that his responsibility requires him to make as complete a break with war and with the war establishment as he possibly can.

Incidentally, the stage in his development as an individual and particularly as a C.O. may well have some-

thing to do with the stand an individual takes. It is important to weigh this factor at a time when young men have to make the decision about draft status at a very early age. Admittedly, there are cases when men have found themselves in the armed services before they realized what military action meant and before they themselves had attained conscientious scruples. Also, there are admittedly cases when men found themselves enrolled in the armed forces before they knew that the law made any provision for conscientious objection. In these circumstances, it is entirely possible that a man in first filling out his questionnaire may ask for 1-A-O, and, on the basis of my previous analysis, be fully entitled to the 1-O classification.

2. The 1-A-O position is the "easier" one to take, since the individual does not in that case stand apart from his fellows but is enrolled in the armed forces as they are. Few young men at 18 or 19 are likely to want to face, or be emotionally mature enough to be able to face, social disapproval resulting from failure to be inducted. As already suggested, it is exceedingly difficult to analyze and determine motives. No Selective Service Board is equipped with the professional help, for example, that would be needed to do anything like a scientific job; but in so far as motivation may be assessed by laymen it may, I think, be said that if anything, there is more reason to question the "sincerity" of one asking for a 1-A-O than of a person who is willing to face the strong social disapproval entailed

by refusal to render even noncombatant service. In so far as this line of thought is valid at all, it provides another reason why, once a board has determined that a person is a conscientious objector, it should give him the classification for which he asks.

3. There are some sects, notably the Seventh Day Adventists, who hold taking the 1-A-O position as virtually a condition of membership. This is both in the sense that a member of draft age may not engage in combatant service and in the sense that he may not refuse to render noncombatant service. Presumably where Congress has laid so much emphasis on "religious training and belief" considerable weight should be given to this fact.

4. Other sects, notably Jehovah's witnesses, make it virtually a condition of membership that one may not be enrolled in the armed forces at all. In general, it seems to me the law with its strong emphasis on "religious training and belief" requires that Selective Service officials attach great weight to such teachings.

APPENDIX "C"

Congressional record proceedings and debates of the 82nd Congress, Second Session of the Church of Christ on participation in Carnal welfare extension of remarks of Hon. Chet Holifield of California in the House of Representatives, Wednesday, May 7, 1952:

MR. HOLIFIELD: Mr. Speaker, under unanimous consent, I include a statement prepared by the Churches of Christ which I am placing in the Record at the request of Rev. C. Nelson Nichols, of Hollywood, Calif., one of the ministers signing the statement.

This statement sets forth the principles subscribed to by members of the Churches of Christ in regard to participation in carnal warfare.

1. The following is the substance of an open letter subscribed to by these Churches of Christ—recognized by the FBI as the "peace" Church of Christ:

"To whom it may concern:

"This is to certify that we Churches of Christ are conscientiously opposed to participation in war in any form. Our belief in the Supreme Being involves duties superior to those arising from any human relation. The basis of this faith is found in a multitude of Holy Scriptures, some of which follow: Matthew 26:48-52; Acts 5:29; Romans 12:19-21; Second Corinthians 10:3-5; Ephesians

6:10-17; Exodus 20:13; Matthew 5:21; Romans 13:9.

Our position on this vital subject has been set forth many times in this country by our ministers across the Nation. Alexander Campbell set forth these principles in his Address on War, in 1848, at Wheeling, W. Va., and it was published again in 1866 in Popular Lectures and Addresses of Alexander Campbell. On file in Washington, D. C., under file No. A. G. 000.31, are letters signed by many of our brethren stating our position on this subject. The book, Old Paths Pulpit, published by Homer L. King, Route 2, Lebanon, Mo., contained a recent work on this subject. The Old Paths Pulpit is a book of 33 written sermons by as many preachers and evangelists, and one, The Christian and Carnal Warfare, written by Paul O. Nichols, 849 Wilcox Avenue, Hollywood, Calif., sets forth our position in more recent times. This sermon represents a recent pronouncement, publicly made, of our religious position with regard to participation in carnal warfare.

"We do not know of an active minister in these Churches of Christ who does not oppose Christians participating in carnal warfare. These Churches of Christ are not to be confused with many which wear the same name; we constitute a distinct fellowship.

"We submit this that all may know our position relative to our opposing participation in carnal warfare, and that we might be recognized as a distinct group or fellowship which now is and in

the past has been 'a peace church,' to use modern terminology."

2. Excerpt from A. Campbell's Address on War in 1848 (p. 10):

> "We should inspire a pacific spirit, and urge on all proper occasions the chief objections to war. We must create a public opinion on this subject. . . . War creates and perpetuates national jealousy, fear, hatred, and envy. It arrogates to itself the prerogative of the Creator alone, to involve the innocent multitude in the punishment of the guilty few. It corrupts the moral taste and hardens the heart; cherishes and strengthens the base and violent passions; destroys the distinguishing features of Christian charity—its universality and its love of enemies; turns into mockery and contempt the best virtue of Christians—humility; weakens the sense of moral obligations; banishes the spirit of improvement, usefulness, and benevolence; and inculcates the horrible maxim that murder and robbery are matters of state expediency."

3. Excerpt from Paul O. Nichols' Christian and Carnal Warfare, published in 1945:

> "We, as Christians, are as out of place engaging in a carnal conflict, as the world would be trying to fight the spiritual warfare. The world cannot fight the spiritual fight, without first becoming spiritual; no more can a Christian fight a carnal conflict without first becoming carnal."

4. In regard to selective-service registrants:

> "This body or fellowship has and is gaining recognition as to its unity regarding nonparticipation in carnal warfare. Each young man studies for himself the various aspects of the question, forms his own belief, and takes his own stand on his convictions. The church influences his position only in teaching and offering scriptural references for his personal study and then stands behind him wholeheartedly in encouragement and moral support"—C. Nelson Nichols.

Reference may be made to or information obtained from the following men who are closely associated with the work of these Churches of Christ: Homer L. King, route 2, Lebanon, Mo.; Homer A. Gay, Lebanon, Mo.; D. B. McCord, Glendora, Calif.; J. Ervin, Waters Lawrenceburg, Tenn.; C. Nelson Nichols, 849 Wilcox Avenue, Hollywood, Calif.